

A
PETITION
to the Kings most

excellent Maiestie, the Lords Spi-
rituall and Temporall, and Commons
of the PARLIAMENT now
assembled.

VVherein is declared the mischiefes
and inconueniences, arising to the King
and Common-wealth, by the Im-
prisoning of mens bodies
for Debt.

Printed at London.

1622.



MVSEVM
BRITAN
NICVM

TO THE KINGS MOST
Excellent Maiestie, the Lords Spiri-
tuall and Temporall, and Commons, in this
high Court of PARLIAMENT
assembled.

*The humble Petition of the distressed
Prisoners for Debt, in the severall Prisons
of ENGLAND.*

Most humbly sheweth, that
whereas it pleased the late
Queene ELIZABETH, of fa-
mous memory, in the 28. yeere
of her Raigne, out of her
Princely compassion, to graunt
her most gracious Commission
for the Examination of the distressed estates of
poore indebted Prisoners, and for their release:
which by the Threats of some powerfull merci-
lesse Creditors to the Commissioners, with the
danger of the Law of Premunitie, occasioned
them to forbear the executing of the said Com-
mission, according to the good intended; by rea-
son whereof the said Prisoners were afterwards
enforced for their reliefe, to vse the aide of the
Courts of Equity, for the ordering of their Re-
fractory Creditors, which of late by reason of

some abuse therein. It pleased your most excellent Maiestie, by your Highnesse late Proclamation, vtterly to take away all reliefe of your poore distressed Subiects in that kinde, (vntill vpon Mature deliberation, an exact and full remedie may be prouided in Parliament in that behalfe.) And for that nothing as yet is done (for ought is to vs knowne,) wee in the meane time groaning vnder the extreame oppressions of our mercilesse Creditors, doe most humbly beseech your Highnesse, and this most Honourable Assembly, to take in consideration this ensuing Treatise, tending (as is hoped) to the aduancement of Gods glory, the seruice of your Maiestie, the good of the Common-wealth, and the preservation of infinite numbers of your Highnesse dutifull and loyall Subiects, their poore Wiues and Children: who in all humility and obedience, submit the same, together (with their miserable estate) to the most excellent wisdom and clemencie of your gracious Maiestie, And this most Honourable and graue Assembly, &c.



IMPRISONMENT OF MENS BODIES FOR

Debt, as the practise of *England*

now stands:

Is,

Cap. 1. *Against the Law of God.*

Cap. 2. *Against the Law of Man.*

Cap. 3. *Against the Rule of Justice.*

Cap. 4. *Against the Law of Conscience and Christian
charitie.*

Cap. 5. *Against the practise of other Countries.*

Cap. 6. *Against the Creditors owne Profit.*

Cap. 7. *To the Preiudice of the King & Common-wealth
The Conclusion.*

CAP. I.

Against the Law of God.

WHatsoever directly or indirectly forbid-
deth the performance of Christian duties
to the Law of God, is against the Law of
God.

The Law of God willeth and comman-
deth euery man to follow a Vocation: To doe the ho-
nour, duties, and seruices owing to his Prince, Coun-
trei,

trey, and Parents. To liue with, and prouide for, his wife, children, and family; and to instruct, gouerne, and bring them vp in the knowledge, faith, and feare of God.

Stat I.R. 2.
cap. 12.

But Imprisonment of mens bodies for debt, forbiddeth the Prisoner to liue in, or to doe the workes of his Vocation: It forbiddeth husbands and wiues, parents and children to cohabit: It forbiddeth and seperateth him from the Christian congregation, and tyeth him vp where neither Sacraments, Preaching, or other seruices of God are established: It forbiddeth and disableth him to performe many other Christian duties owing to God and his neighbour; and compelleth him to liue corruptly, and vnprofitably in Idlenesse, which is contrary to the Law of God.

Therefore Imprisonment of mens bodies for debt, is against the *Law of God*.

And againe, euery humane Law (to make it rightly iust and lawfull) ought to be founded in or by the Law of God.

But no Law of God directly or indirectly willeth or commaundeth Imprisonment of mens bodies for debts. Nor is it warranted by any example in the word of God.

For all, ruling ouer the body or goods of our brother, by any kinde of hardnesse, cruelty, or oppression, is expressely forbidden in the *Law of God. viz.*

In the Olde Law, The Children of God were forbidden to lend their brother money, meate, or any other thing vpon Vsurie. Deut. 23. 19. & 20. Leuit. 25. 36. 37. Exodus 22. 25.

And if thou take thy neighbours rayment to pledge, thou shalt

shalt restore it vnto him before the Sunne goe downe, for that is his couering onely, and this is his garment for his skinne, wherein shall he sleepe? Exodus 22.26.

He that hath not oppressed any, but hath restored the pledge to the Debtor, he that hath spoiled none by violence, nor hath giuen forth vpon vsurie, nor taken any encrease, he shall surely liue, saith the Lord. Ezechiel 18.8.

And if thy brother be waxen poore, and fallen in decay with thee, then thou shalt relieue him, and as a stranger and sojourner so shall he liue with thee. Leuit. 25.35.

Moreouer, if thy brother be impouerished, and be sould vnto thee, thou shalt not compell him to serue as a bond-servant, but as a hyred servant, and as a sojourner he shall be with thee, and shall serue thee vnto the yeere of Iubilee. They are my servants, saith the Lord, they shall not be sould as bond-men: Thou shalt not rule ouer him with rigour, but shalt feare thy God. Leuit. 25.39. & 40. & 42. & 43.

Over the children of Isræll your brethren yee shall not rule one ouer another with rigour. Leuit. 25.46.

And when thy brother which hath beene sould vnto thee, hath serued thee sixe yeeres, thou shalt let him goe free. Ieremy 34.14.

And when thou sendest him out free, thou shalt not let him goe away empty, but shalt giue him a liberall reward of thy sheepe, corne and wine. Deut. 15.13.14.

And at the end of seven yeeres thou shalt make a release, and this is the manner of the release. Enery Creditor that lendeth ought vnto his neighbour shall release it, hee shall not exact it of his neighbour, or of his brother, because it is called the Lords Release: of a stranger thou maist exact it againe, but that which is thine with thy brother, thine hand shall release. Deut. 15.1.2.3.

Similitudes,
Parables,
and Exam-
ples, are il-
lustrations,
but neither
proofes or
warrants.

In the Law of the Gospell, *The Romanes who were Gentiles, and to whom the Iewes were subiect and slaues, might haue some kinde of practise of imprisonment for Debt: as it may seeme in Math. 18.23. &c. & Math. 5.25.*

But it appeareth not that the children of God who must be our rule, did or might exercise any such thing one upon the other. For our Sautours conclusions upon both those places of Math. are exhortations to peace, mercy, and forgiuenesse. which are contrary to Imprisonment, and euery kinde of rigour or cruelty. Math. 18.35. & 5.30.

Nor hath the Gospell a word of commaund or warrant for imprisoning a Christian brother for Debt.

But we are often taught and commanded to remit our debts, and to forgiue our debtors, viz. when yee pray, pray thus: Our Father, &c. forgiue vs our debts, as wee forgiue our debtors. Math. 6.12.

And in the 14. verse, For if you doe forgiue men their trespasses, your heavenly Father will forgiue you your trespasses.

Eph. 4.32. *And in Luke 11.12. Forgiue vs our sinnes, for euen wee*
Luke 17.3. *forgiue euery man that is indebted vnto vs.*

Col. 3. 12.
13. *And againe, our Sautour Christ, commandeth to loue our neighbour as our selfe, and calleth it one of the greatest commandements, Matth. 22. and Rom. 13. And to forgiue our brothers trespasses, to 70. times seuen times, Math. 18.*

And in the 5.44. of Mathew. Loue your enemies: blesse them that curse you; doe good to them that hate you: and pray for them which despitefully vse you and persecute you. Rom. 12. 17.

Now if no Law of God in the old Byble commandeth, or by any example warranteth Imprisonment of our brothers body for debt; but expressely forbiddeth

to lend him vpon Vsurie and encrease: Or to keepe his Mortgage all night, lest hee should want it to sleepe in; Or to vse him as a bond-seruant; Or to sell him as a bond-seruant; or to rule ouer him cruelly, as is before shewed.

And commandeth to relieue him if he be fallen into decay. To take care how, and wherein he shall sleepe. To set him free at sixe yeeres, and then to giue him a liberall Reward: all which is before plainly proued.

Then are all vnbrotherly rigours, and ruling ouer his goods or person by oppression, much more cleerely against the Law of God, viz. to consume him by Vsurie, Forfaitures, and such like; to take from him all his goods, bed and bread, and all that may minister comfort or reliefe vnto him; to cast his body into prison for an Vsurious Debt, where his misery is extreame and endlesse, without hope of a Iubilee for the freedome of his body, or releasement of his Debt, or any other comfort or care that either the Stat. Law prouideth, or his brother Creditor taketh for him. For the Creditors, and the straightnes of the prison, strip him of all meanes whereby hee may haue, or get bread by his labour or vocation to keepe him, his wife and children from staruing, whilst hee lyes in prison, as by many desperate, and pittifull examples of this kinde haue beene scene.

Much lesse can any man say, that the Gospell commandeth or counselleth these things; for to forgive our brothers debts and trespasses, as God should forgive our sinnes; to loue our neighbour as our selfe, and not hate an enemy; must needs exclude all violence, rigour, cruell dealings, oppression, hard hartednesse, and ruling of one brother ouer another, in matter of Debt or Trespasse, by Vsuries, Forfaitures, or Imprisonment.

Therefore, the practise in *England* of putting it in the will and power of the Creditor, to leaue the recovery against the goods, and to fall vpon the body, credit, and liberty of the Debtor by Imprisonment, is against the will and Law of God.



CAP. 2.

Against the Law of Man.

A *B* *f* *n* *i* *t* *i* *o*, it was not so: for by the common Lawes of *England*, which are the most ancient, most eminent, and most binding Lawes, No Free man may be taken or Imprisoned for Debt. *Register fol. 77. de homine replegiando. In fol. 66.* And by the Statutes of 3. *Edw. 1. cap. 15. & an. 5. & 9. Et an. 25. Edw. 3. cap. 4.*

Nor were, or can the said common Lawes (being the fundamentall Lawes of this Kingdome) be repealed or made voyde, for they are perpetuall and radicall Lawes.

But the Creditor was to take his satisfaction vpon the Debtors estate of goods and lands. *W. 2. cap. 18. an. 13. Edw. 1.* So his body and endeouours were still free.

By *Magna Charta* (which is not onely a perpetuall Law, but as a perpetuall Contract betweene the King and the Subiect, written in the blood of thousands) the body of a Free borne man, might not bee Imprisoned *nisi super legem terræ. Magna Charta. 9. Hen. 3. cap. 29.*

And

And the power of that Law of *Magna Charta* is not, nor ought to be extinguished at this day, for the great and weighty reasons and causes whereupon it was first founded.

But is in force in every point and article thereof. 52. Hen. 3. cap. 5. 14. Edw. 3. cap. 1. *Abridgement Stat. fol. 65. a. b.*

And all Statutes that shall be made contrary to *Magna Charta*, are voyde by the Statute of 42. Edw. 3. cap. 1.

In summe, it is an vndoubted thing, that by the ancient Lawes and *Magna Charta*, the bodies of Free men were not imprisoned for Debt, otherwise there needed no Statute Lawes to warrant the same. And this privilege was a distinction betweene Free borne men and Slaues.

Yet for the hardnesse of mens hearts; And by the decay of Christian charity amongst men, afterwards there was a Statute Law made, that Accomptants bodies onely might be Imprisoned, and put in Irons till payment of Arrerages vnto their Lords, by the Statute of *Marlebridge*. 52. Hen. 3. cap. 23. W. 2. an. 13. Edw. 1. cap. 11. And this Act was made generall against all Debtors by the Stat. of 25. Edw. 3. cap. 17.

And in like manner were Merchants bodies onely Imprisoned vpon the Statute Merchant. *Acton Burnell*. 11. & 13. Edw. 1. And this Act was also made generall against all Debtors, by the Stat. of 25. Hen. 8. cap. 6.

Heere let vs note two things. First, the pouerty of the words of this Stat. of 25. Edw. 3. that first Imprisoned the bodies of Free borne men for Debts; for it hath no cause, circumstance, or reason alleadged, why the same was so ordained.

Secondly, that yet Prisoners in execution might and

did follow their Vocations and affaires, by Bayle, Mainprize, or Baston, as by the Stat. of 1. *Rich. 2. cap. 12.* And from that time forwards were Prisoners tyed vp shorter to *Habeas Corpus*, and the Kings speciall Mandate.

So here is a later Statute Law, direct contrary to the ancient common Lawes of *England*, and to *Magna Charta*. But how contrary Lawes may be all in force at once, or that the Creditor may have the benefit of the Statute Law, which is but a later branch, and the Debtor be denied the benefit of the common Law and *Magna Charta*. (which are the ancient rootes and body to all Statute Lawes) seemeth very strange.

And how preposterous it is that the greater should give place to the lesse! Or that a Statute Law may disannull the fundamentall and mother Lawes, seemes more strange and more preposterous. For Statute Lawes in comparison or competition of fundamentall Lawes are no Lawes, especially when they are direct contrary to the Mother lawes.

And againe, Statute lawes, are to maintaine and confirme the intent of the fundamentall lawes, by adding matter of explanation, or other necessary dependency; not to contradict and disannull the full and whole meaning of the fundamentall Lawes: especially in one of the greatest Freedomes that men ought to enjoy by Birth and Countrey.

But let vs examine the reasons commonly alleadged for the making of these Imprisoning Statutes, and for continuing the practise thereof at present.

1. That because men made secret estates in trust to defraud their Creditors, therefore their bodies were to be Imprisoned in execution.

Which is a very weake ground: for though some men

men did so in *Edw.* the thirds time, it doth not follow that all did it then, or now.

And it is iniust to punish all promiscuonsly, as well frauders as *non* frauders, without and before any prooffe made.

And yet if all Debtors were guilty of that supposed fraud, this Imprisonment were needlesse: for the fraud being proued, the Debtors estate is discouered, and becomes lyable to the Debt; and the Law punisheth the frauder otherwise (or harder punishments may be made for fraud) what needes then any Imprisonment of the body for Debt?

2. It is alleadged, that the Debtor being sufficient, and able, of obstinacie will not pay: *Answer.* Let the Debtors sufficiencie be proued, and forthwith the law giues it to the Creditor, whether the Debtor will or no; so it is still needlesse to imprison the body, especially when twenty yeeres Imprisonment discounteth neuer a penny of the Debt, and yet the Debtor hath suffered more misery and punishment vpon a bare supposition of fraud or obstinacy, then a guilty Traytor or Rebell suffereth, for the highest Offence.

Therefore, we may conclude, that Imprisonment of mens bodies for Debt, is against the law of Man. Or that the fundamentall lawes of this Kingdome are no lawes: Or that the wisdom of that Statute law exceeds the wisdom of the law of God, and of the Gospell; and the wisdom of the Mother lawes of this Kingdome, which haue ordained the recouery of Debts vpon the estate, not vpon the person of the Debtor.



CAP. 3.

Against the Rule of Justice.

FOR all Lawes that are against the Law of God, or which haue no ground or foundation in or by the Lawes of God, as is before proued in the first Chapter, is also against the Rule of Iustice.

And it is against the Rule of Iustice, and Law of nature, That men equally Free borne, should be deprived of the common and equall liberty, and bee giuen into the power of another, without criminall cause or guilt.

But let it be demanded of the Statute Law, to what end the Debtor is Imprisoned?

It must be answered, it is either for punishment or cohercion.

1. If for Punishment, it is against the rule of Iustice: for to bee found a Debtor in the Law, is no criminall guilt, and therefore it is an iniust thing to punish him criminally, that hath not offended criminally.

2. If for Cohercion, to make the Debtor bring forth his estate to the payment of the Debt, it is against the Rule of Iustice also; for to enforce a man by hard punishment to doe that, which doth not appeare to be in his power, or which the Law is already certified, that there is not wherewithall to doe, (for so it is certified before the *Capias* against the body was graunted,) is cleare against Iustice.

If it be replied that it is vpon a supposed fraud that the Debtor is so Imprisoned; it is iniust also: For to punish vpon supposition, or before prooffe made, is vniust; why should not the Debtor in this case be presumed in the Law to be innocent of fraud, (as in all other cases accused men are) till the contrary be proued?

And it is iniust also, because Imprisonment of the Debtors body, though it be torne in pieces for the Creditors sake, yet neither fills the Creditors purse, or discounts a penny of the Debtors Debt.

Againe, it is not agreeable to the Rule of Iustice, to thrust all kinde of Debtors into a Prison together in a heape, without respect to the different qualities of men, to more or lesse guilt of fraud or obstinacy; or whether it be an honest, or an Vsurious Debt, to more or lesse meanes of the Debtor, whereby he must liue, or starue in Prison, or to the holding him one yeere, or twenty yeeres in Prison: for some are great Debts for thousands; some are small Debts for trifles; some are supposed Debts not yet proued; and in trueth some are no Debts: but for certaine, all (or 9. in 10.) are vsurious Debts and Forfaitures, scarce one friendly and honest Debt of a hundred.

Vide Plur.
in *Solans*
life, fol. 90.
not much
vnlike *Dra-*
cons Lawes,
that ordaine
all offences
to be alike
punished.

And it is iniust in proportion: For the rule of Iustice by the Law of God, is an eye for an eye; not a mans liberty, credit, person, life, and all that is decre vnto him, for goods or moneyes vsuriously lent or comeced.

And indeed it is contrary to Iustice and reason, that the Law should by vncharitable violence of Imprisonment, compell the Debtor to pay that, which the Creditor (not in honesty or friendship, but for vncharitable Vsurie and his proper vnlawfull gaine) hath desperately and corruptly aduentured to trust.

And

*Vide Plu-
tarch in So-
lons life, in
fol. 87. the
euill and
miserie of
Debt and
Vsurie.*

And whereas it is suggested, that these violent courses against Debtors in fauour of Vsurers, are done for the common good, for maintaining contracts, commerce, &c. yet, it is too cleare, that their end and effect, is the aduancement of cruelty and oppression, by vsurie and extortion, to the depression of honest and lawfull comerce, and banishment of Christian Charity, which is, and ought to be the onely rule of pollicie, to beget and maintaine a flourishing Common-wealth, as is more at large hereafter shewed.

But it will be said, that Imprisonment is no punishment: For Prisoners liue at ease and pleasure, &c. and indeed such is the common receiued opinion, though false and slanderous.

For the truth is, that the miseries and afflictions of Imprisonment, are inexpressable, and cannot be conceiued, by any that haue not felt, or had prooffe thereof.

The ancient Romanes construed and reputed Imprisonment, to be a guard or safe keeping of slaues and bondmen, but a heavy punishment to Free borne men.

In the Old Byble, the Prophet *Michea* for a punishment, was by King *Achab*, sent to prison, to be fed with the bread of affliction. And surely, if the bread of affliction be to be found any where, it is in the prison.

For Imprisonment is a corporall punishment, a griefe and torture of the minde: A long and lingring dying; and sometimes a short killing by plague, &c. It ouerthroweth a mans reputation, and destroyeth all that is good or deere vnto him.

His kindred grow strange, his friends forsake him, his wife and children suffer with him, or leaue him, or rebell, or degenerate against him, and lye open to all disgrace, and villany of the world; in whose miseries
the

the Prisoner suffereth more, then in his owne sufferings.

Before him, the sight of all these evils, (and which is not the least,) he lyes open to euery arrow of scandall or Calumny, that a malicious Aduersary will shoote at him, which he can neither resist or auoyde, because he is not present to confront them.

Behind him, grieve for losse of liberty, credit, friends, estate, and all good promising fortunes.

His Bayle and Suerties (who commonly are his nearest kinne or dearest friends) are in prison already, or lye in the power of the Aduersary, to make them partakers of the same miseries.

We will passe by, the ill Ayre, straight place, hard lodging, vnwholsome dyet, with the noyse, noysomenesse, pestring and fettering the body of the Prisoner, as the least of many evils; and rest in this, that the misery, basenesse, and bondage, which Prisoners suffer and vndergoe, is more then can be expressed.

Yet note, that no man can stand in so sure an estate, but either in himselfe, or in his children, hee may tast and feelee the miseries and sufferings of this iniust rule of Imprisonment.

Now to lay so many miseries (as Imprisonment bringeth with it) vpon a man, to compell him to doe that, which appears not to be in his power to doe, and who is not criminally guilty, must needs be against the rule of Iustice.

Therefore, satisfaction ought be sought vpon the Debtors estate, not vpon his body.

C **CAP.**



CAP. 4.

Against the Law of Conscience and Christian Charity.

FOR whatsoever is made or done against the Law of God, or not warranted thereby, is also against the Law of Conscience and Christian Charity. Now to enioyne and compell men, to performe corrupt and Usurious Contracts, and to pay Vsuries and Forfeitures, is clearely against the law of God, therefore against the law of Conscience and Charity.

But to induce diuers necessary consequences for the prooofe of this Chapter, it is first to be remembred, how many wayes any man may guiltlesly, and innocently fall, by the Law, be conuict of debt or dammages, and cast into prison thereupon, viz.

1. By ignorance or misprission; of himselfe, that knoweth not to expresse or informe his owne case aright; or of his Attourney or Councellour, who are not at all times, and in all cases so sufficient, but that they may, and doe oftentimes erre in answering, directing, or pleading; especially when false things are cunningly laid, or true things vncertainly laid.

2. By negligence of his Attourney or Councellour, who sometimes doth forget, faile. or not attaine to an-
were

swere or pleade at iust times: Or by the Defendants owne necessity, who hath not, or cannot pay the Fees and charges, or sends it by one that payes it not, or payes it to late.

3. By practise or combination of the Aduersary, with the defendants Attourney, Sollicitour or Councillor, or with the witnesses or Iurors: for loue, malice, or ends of their owne.

4. By periury of witnesses: in concealing, peruer-ting, or misapplying trueth, or deposing vnt ruth.

5. By forgery of Letters, Bonds, Deedes, and such like.

6. By subornation, inclination, or corruption of Witnesses, Iurors or Officers.

7. By affection, inclination, or corruption of the Iudge.

And so likewise, any man may be disabled, and become Insoluent, by as many casualties, and acts of honest and good intention; and consequently become a Debtor, and cast in prison thereupon, viz.

1. By Suerriship, Bayle, or Security; for kindsmen, friends, or others.

2. By loane to friends, kindsmen, or others, who pay not againe.

3. By falshood of friends, seruants, and others, put in trust with Moneyes, Euidences, Office, Trade, Lands, &c.

4. By mouing or defending a iust suite in Law, where might, practise, or falshood, ouer-heares him, or many yeeres suite and delay consumes him.

5. By fire, water, shipwrack, and such like suddaine and vnresistable accidents, at sea or at land.

6. By robbery of Theeues at land or at sea.

7. By unprofitable buying or selling of Lands, Leases, Merchandises, &c. whereby many honest and good understanding men haue sayled, and beene overthrowne.

8. By Arrest, Closures, or pretences of forraigne Princes.

9. By suddaine losse of friends, or Masters, on whose life or fauour, many a mans estate & liuing dependeth.

10. By Errors, in making or keeping Reckonings, and Accompts, or by losing, or not calling for, Acquittances, Bills, Bonds, Releases, &c.

11. By Engagements and Assurances for Warranties, Annuities, Dowers, Ioinctures, Legacies, and such like.

12. By Usurers, and Usury, which slyly and suddenly eateth vp a mans estate, by Forfaitures and Interests, ere he be aware.

13. By a multitude of other wayes & meanes, which were too long for this discourse: in briebe so fraile, insecure, and inconstant, are all the things of man in this world, That no man in what state or condition soeuer he liueth, but may become insoluent and in debt by one way or other.

And it is to be noted, That the Law admits no Information, or takes consideration, of any of these conscionable circumstances, of casuall Insolucency, or Innocent falling as aforesaid.

Or whether the Debt grew vpon a deceitfull or corrupt bargaine, Usury or Forfaiture.

Or whether the Creditor hath suffered any damage or no.

Or whether the Debtor hath paid any part of the Debt.

But in *Summo Iure*, giueth the whole forfeiture without any conscionable respect.

And the after proceedings are suitable. For after Iudgement, though the Debtor by his goods, discharge ninety and nine pounds of one hundred pounds principall, yet the body is subiect to be imprisoned, till hee pay the whole Forfeiture of two hundred pounds. And the words of the Statute are, that if hee haue no goods or chattels, or not enough to satisfie the whole, his body shall be Imprisoned for the rest, till hee make payment or Agreement. *Vide Marlebridge. cap. 23. an. 52. Hen. 3. & W. 2. cap. 11. An. 13. Edw. 1. & Stat. Acton Burnell an. 11. Edw. 1.*

So euery way it is in the absolute will and power of the Creditor, to cast the Debtors body into prison, when in all conscience and equity if he haue no meanes to pay, he ought be let out of prison, or not Imprisoned at all.

For Imprisonment of the Debtors body (in it selfe considered) neither is or can giue satisfaction to the Creditors debt, though hee murder it by Imprisonment.

And in like rigour, when the Debtor is in prison, the Law neuer looketh after him with a conscionable eye.

For then againe, there ariseth most necessary and weighty matter of conscionable consideration, namely whether the Prisoner hath meanes to pay the Debt or not; And whether he hath meanes to keepe himselfe in life: For to cast him in prison (who hath no meanes) is a likelier course to starue him by famine, then to winne payment of the debt.

1. For some Prisoners haue meanes, and are willing, but cannot pay.

1. Either because the present power of their estate is not in them.

Or in regard of the time, that they cannot sell, or cannot receive payment so suddenly.

Or in regard of the worth; For scarce any will buy the Prisoners lands, lease, or goods, at halfe the worth.

Or in regard of others Interessed, without whose consent he cannot dispose thereof: Or the estate is intangled with Dowers, Ioinctures, Warranties, Assurances, Statutes, &c.

2. Some haue meanes, and are willing to pay, but their meanes will not hold out to discharge the whole Forfaitures and Vsuries, which commonly is as much more as the principall.

3. Some haue not to pay principall, forfeiture, or Interest, and the Creditor knoweth or beleeueth it: yet because the Prisoner hath some able kinsman or friend, he will keepe him miserably in prison 10. or 20. yeeres, to try conclusions. And they are no small numbers that are cast into, and now lye in prison, vpon this proiect, who liue and die miserably for their able friends sake.

4. Some haue meanes, and will not pay, of fraud and obstinacy.

But for certaine, there can hardly be found one of a hundred prisoners guilty in this behalfe, it being the common slander of Creditors, to cloake their cruelty and tyrannie. For if that were so, the Creditor (who searcheth the very raynes of the Debtor and his estate, will rather cease and recouer the estate to the payment of his debt; then cast the Debtors body into prison, where, if he dye, he looseth all.

Now if an honest man may innocently fall in the Law,

Law, by such a multitude of accidents, practises, and errors of others, and by doing iust and friendly Offices to others: and may faile also in his estate, and become Insoluent, by so many wayes, casually and causelessly in himselfe, and by the fault and error of others, And cannot be a criminall Debtor but one way, which is by fraud and obstinacy onely, of which scarce one example of a hundred is to be found: How can it stand with any charity or conscience, to neglect and passe by so many circumstances, and such weighty ones in conscience, and to fall vpon the Debtor with such cruelty, by laying such a heape of miseries vpon him, his wife, children, and reputation at once, as Imprisonment bringeth.

And, as if all were too little, many Prisoners are shut vp *Sub arcta custodia*, vpon bare suggestion of the Creditor or Aduersary, and without any prooff made, reason shewen, or once calling on hearing the Prisoner speake: much resembling the course of forraigne Inquisition: when the Iudge of Iudges counselleth not, to adde affliction to the afflicted: and punishments ought rather be mitigated and minished, then exasperated or encreased. *Iulius* the Heathen entreated *Saint Paul* with much humanity when he was a prisoner, suffered him to goe to his friends, and to doe his affaires. The *Civilians* define strict or straight Imprisonment to be a kinde of torment, and farre beyond safe custody, and that perpetuall Imprisonment, banishment, and death, be equivalent. Now then euery Debtors Imprisonment, whose estate will not extend to discharge his whole Debt, (which is the case euen of euery Prisoner for Debt) is perpetuall, and consequently equall to death and banishment. And a Iudge ought to visite the Imprisoned,

and

and to cause that they may haue things necessary. But to returne to the Creditor againe, Is it not a most vncoscionable thing, that when he knowes the Debtor hath no meanes, will yet cast him in prison, and keepe him there all the dayes of his life, vpon a corrupt, and oftentimes causelesse or casuall Debt without any fraud proued? Why should not the Debtor rather, in conscience and equity, be set at liberty to get bread for himselfe, wife and children, when hee hath no meanes to pay, or is content to pay and assigne all his meanes, to auoyde the misery and danger of perishing by Imprisonment? Or what can the cruell Creditor expect more but the Debtors life, and the spoyle of his wife and children? Or is it not iniust and vngodly to keepe such a poore Debtor in prison, in hope to wring payment from his friends, by doing cruelty vpon his body?

It is true, that the ancient common Lawes of *England*, are very strict in this point of maintaining Pacts and Contracts: but the Contracts of those times were simple, honest, and legall, and the recouery was against the estate onely, for there were no penall Bonds knowne, nor Vsuries practised by Christians when those Lawes were made. But all our Contracts and Bonds, or the greatest part are corrupted with Vsury and Forfaitures, which are extortions in a high degree. And to force men to performe such, with the losse of their estates, credit, liberty, and many times of the life to, is most inequitable.

Especially being the Law, provides euery Creditor his full damage, without the helpe of a penall Bond: which plainely sheweth, that all Forfaitures are needlesse. And they are iniust also, for they make the
 Vsurer.

Vsurer iudge of his owne damage, which of right belongeth to the iudgement of the Law.

And therefore it is too cleare, that all the former cases and causes being different, require different value in conscience and equity, yet the Law will neither see, nor heare any of them, but punisheth 99. innocent Prisoners, that would (but cannot pay) because one Debtor may happily be found fraudulent and obstinate.

But it will be said, that the Chauncerie doth mitigate the hardnesse and rigour of the Law in Vsuries for Forfaitures, &c. and that wrong Iudgements may be reversed by Attaint, Errors, *Audita Querela*, &c. Wherevnto it is answered.

That the remedy is worse then the disease, for all courses of reliefe by Law or Chauncerie, are hard, tedious, incertaine, long and extreame chargeable.

And it is a lamentable case, that when the Debtor is vniustly or vnconscionably cast in the Law, stript of his estate, his body Imprisoned, his liberty tyed vp, his credit destroyed, and his friends banished; then, to send him so disabled, to seeke remedy by new suites at Law or Chauncerie, which are chargeable beyond beliefe, and more chargeable and more disaduantagious to the prisoner, then any other by farre: is neither iust, conscionable, or reasonable. For many a prisoner hath in these courses spent his meanes, or staru'd in prison, ere his suite hath beene halfe ended. The difficulty, or rather impossibility, of these Reliefes, is too well knowne.

And with the same extremity, doth the Statute of Bankrupts deale with the poore Debtor.

1. In that there are so many prouisions made for the Creditors Recouerie, but not one Act of tenderesse

D

towards

towards the Debtor. For the Debtor may be staru'd in prison, with his wife and children, in the foure moneths assigned for the finding, ceazing, and deuiding of his estate, by reason there is no prouision at all made for their liuelyhoods in the meane time.

2. In that the Statute hath not remembred to set the Debtor at liberty, when all his estate is taken from him, and deuided, but leaues him without meanes, to perish in prison.

3. Nor hath it made any difference in the quality of Debts; for the greatest part of all Prisoners Debts are, or arise from corrupt bargaines, forfeitures, and Vsuries: which, when the poore Debtors estate will not extend to pay the principall, the forfeitures and Vsuries might be spared, or at least the Debtor not be kept in prison for such; without meanes, and without trade to keepe him, his wife and children in life. And it is a hard thing, to breake vp the conscience by Oath, to finde wherewith to pay forfeitures, vsuries, and corrupt bargaines.

Doubtlesse this hardnesse of the Law, the miseries of Imprisonment, and the vnconscionable dealing of Creditors, (all falling heauie vpon the prisoners credit, estate, wife, children, and oft times vpon his body and soule to) hath wrought many strange and pittifull effects. And it will not be vnfit in this place, to shew two or three especial examples out of the Kings Bench, because they are neere at hand, and lately done, though many more Acts of this kinde haue beene done there, and in the Fleete, by diuers others, who in the fence of their iniust sufferings, and agony of their miseries, haue with poyson, kniues, halters, and in Vaults, &c. desperately made themselves away; and diuers others haue
seriously

seriously intended, or attempted to doe the like, who yet, by Gods great mercy, or some good accident haue beene preuented. All which (to annoyde tediousnesse in this discourse, and the inconueniencie of naming them) I thinke fit to spare. As also all like desperate Acts done in all other prisons in *England*, who must needes haue too many like examples: because they haue like men, like weakenesse, and like extremities pressing them.

1. One *Dawley* an vnhappy West-Country man (who formerly had set on worke one hundred poore people yeerely in the Art of Felt-making) failing in his estate, (yet by no knowne vice, for hee was euer accounted an honest and discreet man) was cast into the Kings Bench, where hauing preuailed with fifteene of seuentene Creditors for respite of foure yeeres time: the other two (who were men of very good estate) refused, and prosecuted the Commission of Bankrupt, and obtained the Commission sealed, which with much difficulty and expence poore *Dawley* withstood, and at last hauing obtained a *Supersedeas*, and not able to giue for the priuate sealing but halfe a Peece (for it was his last money) *Edney* (who perceiued there was neede and hast) threw the *Supersedeas* sealed (as by credible report) into the fire; vpon notice whereof, poore *Dawley*, not hauing wherewith to stop the Commission, nor knowing how to keepe himselfe in prison, or his wife and children in life, that night hang'd himselfe.

2. *Frith*, a man of 1600. pound land *per annum*, being indebted seuen or eight thousand pounds, and hauing embroyled his estate by Assurances, Statutes, &c. to diuers great Vsurers, was by Extents, Orders, and Decrees so farre stript of all, that after hee had pawned his

bed-cloathes, and childrens cloathes; at last in meere want and sight of his miserie, hauing but foure farthings left the night before, and his credit for foode spent euery where, kill'd himselfe with a Pistoll. And it may not seeme strange if his faith did shrink, for hee had beene kept two yeeres *Sub arcta custodia*, without hearing deuine Seruice, or Gods word preached: what euer the man or the cause was, wee are sure the courses were vnconscionable, and the state hee stood in, was very hard for any flesh and blood to beare. Hee accused by a Writing made at his death, Sir *John Bennet* and some others, of hard measure and iniustice.

3. In the white Lyon hard by the Kings Bench, one *Allen* with his two Suerties, were about two yeeres since cast into Prison, in Execution of thirty pound Forfeiture and Costs, for twelue pound principall Debt, without other matter or Debt against any of them, who being Mechanicall men, and not able to pay or maintaine themselves in prison, are all three through want grieve, and misery of Imprisonment, dead and perished: So that for twelue pounds Debt, the cruell Creditor hath had the liues of three men, and vndone three families.

And no meruaile, if such strange and desperate Acts happen, and are so often and commonly committed, when in the Kings Bench alone there is neere three hundred soules, for whom our Sauour Christ dyed, and shed his dearest blood indifferently, as for any other Christian Congregation. These men are compassed with a multitude of miseries and heauie afflictions, and therefore some cannot choose, but become weake in faith, stagger'd or desperate, when as (a wofull case it

is) there is not a man to speake a word of comfort in due season, or any one ordayned and established for the common seruice of God, or instruction and comfort of so great a number of fainting and afflicted soules.

Yet accidentally there commeth some Stranger amongst them, who hath little care, (for not being his charge) or little will, for Prisoners haue not meanes to pay the Labourers paines, or hee knoweth not their diseases and distemperatures, because hee returns foorthwith a Stranger as he came, or he hath the common vnworthinesse of drinking or such like, whereby it followeth that Gods seruice, the Prisoners good and comfort, & his owne trauaile, all fall to the ground vnfruitfully, for want of authority, meanes of encouragement, and good example.

In meane time, through weakenesse of faith in God, and for want of feare of God.

One with shame and distemperature, loseth his sence or dies.

Another for pouerty and want, perisheth.

One with feare and griefe, breakes his heart outright.

Anothers heart that cannot breake, the Deuill is ready to teach him desperately how to make way.

One vncharitably flies from his Keeper, that his Keeper may pay his Debr.

Another desperately aduentures his life to breake prison.

One giues himselfe ouer to drinke and companie, thinking thereby to comfort his comfortlesse soule, till all sence of grace and goodnesse bee drowned in him.

And accordingly euery feuerall man falleth, or is in danger to fall, according to his feuerall weakenesse.

But let vs now cast our eye backe to see and consider for whom the Law of God, of Man, of Iustice, of conscience, and the poore Prisoner is thus vnconscionably dealt with, and troden vnder foote. *Answer.* Euen for tenderneffe to Vsurers and vsurious Contracts out of a supposed policie and necessity to amplifie Commerce: but it is to bee remembred; first, that all Creditors of Prisoners for the most part, or nine in ten parts are Vsurers, directly or indirectly, who are not men of want, but haue great and superfluous estates, which not for conscionable respect, but for meere couetousnesse (contrary to the Law of God and man) they lend forth for gaine and increase.

These men doe neither trade nor stand idle, (though it were farre better they were idle) for their doings, or rather vndoings of men) are vnlawfull & vnchristian. Howbeit, vpon the strange opinion of pollicie, they are euery where suffered, tenderly nursed, and carefully provided for in the bosome of our Lawes, and betweene the very hands of Iustice and conscience, as most necessary members of the Common-wealth, and that in so high a rate, as if the Common-wealth must forthwith fall to ruine if Vsurers were not; or should be discouraged, when in trueth it is iustly to be feared, that many crosses and curses haue beene, are, or may come vpon this land for conuiuing and suffering freely without punishment so foule and crying a sinne, that deuoures Gods people, and makes so many poore soules cry to heauen for vengeance: What is this but to preferre the pollicy of man to the eternall wisedome of the Almighty God, and to endeouour to make sin no sin.

For though wee see, that the Trade of Vsury is the onely, surest, and profitablest Trade in the Kingdome (for Vsurers neuer breake) and that Vsurers haue already gotten the stile of good men, the best reputation amongst the Commons, and execute many places and charges of Magistracie in the Common-wealth without impeachment,

Yet we all know that Vsurers are extortioners, and by the word of God stiled Idolaters, practizers of cruelty and oppression, deuourers and spoylers of their Christian brethren, not fit to liue amongst the children of God, but ought be cast forth as Caterpillers out of a Garden, whose consciences are seared vp, and so branded with rapine and cruelty, that rarely, or neuer can they returne to be sound or good, for no Canonick or other story of credit telleth vs of any that euer repented: yet we haue the examples of Thieues, Fornicators, Murtherers, Persecutors, and such like, to haue repented, and to be saued, but not one Vsurer.

And therefore it was at first practized in this Kingdome by Iewes onely, but abhorred and detested in Christians. And many Insurrections were made against the Iewes, and they were at last banished for euer out of this Kingdome, as vnworthy to liue in a Christian Common-wealth, not in regard they were Iewes, but because they liued by this wicked and cankerous Trade of Vsury, forfeitures and extortions.

The Prophet in the old Law cryed out against grinding the face of the poore, which was by simple Vsury. But our Prophets may cry out, against grinding the backe, heart, and life of the poore: for our Vsurers when they haue ground away all the estate, then they cast his body into prison, where his credit, liberty, vertues, and
his

his life to, are as flily ground away by Imprisonment, and the miseries that attend it, as Vsurie ground away his estate by Interrests, Forfaitures, Cheuances, and such like extortious practizes.

The old Prophets neuer heard of such Vsurers, and Vsuries as ours are.

And indeede, this our kinde of Vsurie and practise of Imprisonment, doth as flyly grinde away the Vsurers owne conscience, and consequently his body and soule to. For the Law, (which is alwayes vnderstood, to be founded in Iustice and conscience) casts the whole Forfaiture into the Vsurers lap, where sometimes (happily) or some Vsurers will not take the Forfaiture, but are content with the principall, Vsurie and charges, The Diuell taking aduantage hereat, cockes vp the Vsurer, and tells him that hee is full of Gods grace, goodnesse, and charity, in remitting that, which was his by Law and Iustice.

And being thus flattered, and his conscience smoothed ouer, in opinion of much merit, feares not to exact the Vsurie, and euery other extortious pretence to the vtmost (so it be within compasse of the Forfaiture) by Imprisonment or any kinde of vnconscionable rigour, not once dreaming that his conscience hath any guilt of extortion, or hath cause to thinke vpon repentance, iudgement, or damnation.

And hence it is doubtlesse, that all or the most part of Vsurers liue in so great security, supposed they haue merited heauen, by extorting no more then their Vsurie and charges, haue such peaceable consciences, & suffer themselves to be so quietly carried away like whored Hawkes into the graue of destruction, else their hearts and consciences could not choose but tremble,
and

and make warre within them to repaire that, by hard repentance, which their wicked & abhominable Vsuries hath drawne vpon them by extortion and cruelty.

Let no man therefore flatter himselfe, and thinke he standeth right before God, because the Law alloweth Forfaitures, and connieth at meane Vsuries: For God doth sit and laugh them to scorne, and his iudgement doth attend to execute vengeance for these things.

Some men would excuse the vnconscionablenesse of the Law, alledging, that in ceasing the Debtors body and goods, and giuing way to Vsuries, Forfaitures, and corrupt bargaines, the Law doth no more then what the Debtor himselfe hath contracted vnder his hand and Seale. And *Volenti non fit iniuria*: whereto it is answered;

1 First, that the Guilt of the Law cannot so be washed off: For in Debts where there is no contract vnder the Debtors hand or Seale, the Law giues the Debtors goods, and his body into Prison at the Creditors will.

2 That the Debtor is not *volens*, for it is against euery Debtors will to pay Vsury or Forfaiture; but hee is pressed thereunto by his owne necessity on the one side, and by the Creditors vncharitable will on the other, who will not lend but for Vsury and Forfaiture.

3 The common saying (*volenti non fit iniuria*) is a false position, else it is lawfull to knock a man in the head that is willing to dye, which is absurd, for the will or consent of the party vnto an Act that is in it selfe iniust, cannot make the Act iust, nor iustifie the Actor.

And it is also objected: That if mens bodies may not be Imprisoned, how shall they recover their debts? *Answer.* Vpon the Debtors estate onely, as this Kingdome heretofore did, and other Kingdomes now doe;

and therefore let the Creditor ground his trust thereupon, and trust no farther then the Debtors estate, for thence only can he haue true satisfaction. It is replied. That there will be no more credit giuen, if mens bodies may not be imprisoned, and consequently Trade and Commerce, will decay. *Answer.* Honest trade, honest contracts, and honest trust, will notwithstanding be as plentiful; for while there is the same vse, necessity, and profit by comerce, there must needs be the same effect, (vnlesse it shall be denied by some impossibility) for necessity, and profit, will not let the manner or meanes sleepe, till the effect be wrought.

True it is, that Vsurious Contracts will be more relatiuely made to euery mans estate, credit and honesty, not blindly and desperately as now it is: for how did they in the times of the old Law, of the Gospell, and in the ancient times, and polittique gouernment of this Kingdome, and in all other Kingdomes at present. Shall we thinke that those Common-wealthes had no Contracts, Commerce, or loanes of money, or are these, or those fallen to ruine for want of Imprisoning mens bodies for Debt? Or were it not better that wee had no such amplitude of Commerce, then to purchase it at so deare rates, that giueth offence to the diuine Maiestie, is contrary to our owne Lawes, to iustice, conscience, preiudiciall to the King and State, vnprofitable to the Creditor, and destruction to the Debtor.

To conclude, since a man may innocently be a Debtor by the Law, or become insoluent, or haue no means, or want present meanes to pay, in such a multitude of causelesse and casuall wayes, as is before shewen, and can be a criminall Debtor but one way, which the Law punisheth otherwise?

Why

Why should we (vpon so good warrant as we haue out of the old Law, the Gospell, the Mother Lawes of this Kingdome, and vpon the sight of so many reasons, and rules of iustice, conscience, and Christian piety) doubt to depresse this cruell and vnconscionable practise of Imprisoning mens bodies for Debts, and to restore the ancient lawes and customes of this Kingdome, to their life and liberty againe.



CAP. 5.

Against the Practise of All other Countries.

IN Germanie, France, Italy, Spayne, and the Low Countries; No man is detained in prison for Debt, aboue a yeere and a day, as all they who haue obserued the Lawes and Customes of those Countries can certifie.

In which time the Creditors haue power to take, ceaze, and sell all the estate of the Debtor, which being done, the Wives Dower is first taken out for the reliefe of her and her children, the rest is deuided amongst the Creditors as farre as it will goe, and so the Debtor is freed from those Debts for euer, and at a yeere and a day his body is set at liberty to begin the world anew. And by the ciuill Law *Qui vult cedere bonis liberatus est a debito*. If the Debtor shall be content to relinquish his estate to the Creditor, hee is free from the Debt. So there

needes no Imprisonment at all.

But no Gentleman, or man of quality, may be Imprisoned at all for Debts, his estate only is lyable thereunto, and yet with reseruation of such necessary things, as honesty, honour, humanity and Christianity doth challenge, viz. the Souldiers person, his Armes, his apparell, bed and chamber, conueniently and necessarily furnished, may not bee taken for Debt: and like reseruation is made to euery other man of other quality.

And in all those Empires, Kingdomes, & Regions, which are gouerned by the Mahometan Lawes, there is no tolleration of Vsurie at all, neither imprisonment of mens bodies for Debt, being absolutely by *Mahomets Alcaron*, prohibited in the 4. *Azoara* or Chap. viz. *They which line of Vsurie, shall not rise againe otherwise then the Diuell, because they embrace that which God hath said is unlawfull. They (in excuse) say Vsurie is a Merchandize: But yee which are good, feare God, and forsake Vsurie, lest the anger of God and his Prophet assaile you: take onely the principall, and if thy Debtor cannot pay thee, stay till hee can, and giue him Almes, for this shall be better for thee.* The Iewes (before spoken on) are the onely practizers of Vsurie, in all the Mahometan Countries, and will before-hand take 20. and 30. *per centum*, of any Christian or other that shall vse him: But it rests in the power of the Debtor to call the Creditor before the Turkish Iustice, and what interest the Debtor can proue he hath paid, shall by the Law aforesaid be defaulted out of the principall lent, and the Debtor only lyable to the rest. And no practise of Imprisonment of mens bodies aboue three moneths for Debt, vnlesse the Creditor will maintaine the Debtor, his Wife, Children, and Family, which is neuer knowne:

knowne : So that, imprisonment of mens bodies for Debt, according to the practise of *England*, is a greater burthen and bondage, then is to be found in any other Christian or Heathen Countrey.



CAP. 6.

Against the Creditors owne profit.

IN Or all meanes of satisfaction must arise either out of the Debtors credit, out of his labour and industry, out of the goodwill of his friends, or out of his owne estate. And all thinges that deprive or disable the Debtor in any of these, doe weaken and lessen his meanes, and consequently tend to the Creditors prejudice, and disadvantage.

Now the Debtors credit is lost as soone as he is made a Prisoner : his vocation, labour and industry is denied by Imprisonment. And the Prison makes him become a Reprobate to all his able friends ; for they all forsake him : daily experience approves it. And Imprisonment no way inableth the meanes for payment of Debts, but many wayes wastes and consumes the Debtor and his estate, to the enriching of Lawyers, Keepers of Prisons, Bayliffes, and others. For besides the Prisoners most necessary expences for the liuelihood and maintenance of himselfe, wife and Children, while he lyes in Prison, and the vnauoydable fees and charges that he must vndergoe,

dergoe, hee is forced by reason of his want, extremity, and restraint of liberty to trust friends and Seruants with the sale of Lands, Chattels or goods, and with receipts and payments of money by whome he is very often deceiued, coufened or robbed, as by dayly experience is seene, not onely to the Creditors preiudice, but many times to the ouerthrow of the Prisoners life.

As for Example.

If the Debtor oweth 1000. l. principall, and hath Lands or Lease which may bee well worth 2. Thousand pounds, yet if he cannot conuert it into money for present payment, whereby his body is cast in Prison, there falleth so much disgrace and disreputation sodainly vpon him and his estate, that not one man in a Countrey will bid him ought for it, (how cleare or good sooner the Tytle bee) onely the Lawyer or his Creditor is comonly his Chapman; marry they will giue but halfe the worth, which the Prisoner (whose necessity doth not sleepe) cannot refuse. And while these thinges are in doing a yeare, two or three, is spent in hope to sell to more aduantage, (for the Prisoner is loath to sell his estate for halfe the worth) and in this time, the debts be increased by Vsury and the estate more wasted by the Prisoners owne maintenance, by charges in Law and Chauncery to stop Executions, Out-lawries, Forfeitures, &c. that his estate that was worth Two thousand pounds, and was double to the principall Debt two or three yeares before, is now so farre consumed, that it will scarce make Sixe hundred pounds to pay the principall, Vsury, and charges, which in the meane time are growne to Thirteene or fourteene hundred pounds, besides the ouerplus of Sixe or seauen hundred pounds due by forfeiture.

So that it is by dayly experience found, that many debtors haue offered at first to pay the principall debt, or halfe or more or lesse, as their estate & meanes did then enable them, who after they haue bin cast in Prison, haue beene so farre and so sodainly wasted and consumed by charges, fees, and necessary maintenance of them, their wiues & Children, as they haue not bin able to pay any part of that, which before Imprisonment they offered and were able to performe, but haue perished in Prison for want: so the debtors life & the Creditors debt is lost at once by the Imprisonment, which otherwise had bin both reserued. And though it be true, that some Debtors haue paide their debts while they haue been in Prison, yet they haue been very few, nor were they enabled any way thereunto by Imprisonment, but by some accidentall estate, fallen vnto them by death of Father, friends or kindred, or by some sale of Lands or other estate that could not be made sooner, or by recouery of Lands, Lease, Debts and such like, which time hath ripened, or accident hath brought to the Prisoners hand.

For Imprisonment of the Debtors body, no way enableth the Debtor to giue satisfaction into the Creditors purse, for whether the Debtor liue long, or dyes soone in Prison, that debt is cleared by the Imprisonment.

How preposterous and absurd is it then, to cast the Debtors body into Prison, where his estate is wasted, his Credit spoyled, his Fortunes and vertues lost, his Body afflicted, his life consumed or murdered, and whereby the Creditor barres himselfe from all remedy against his estate for euer.

When as the Debtor though he bee not able to pay presently, yet while he is at liberty, he hath his Credit,
his

his fortunes, his friends, his quality & endeavours free, not onely to raise a new estate to the payment of his Debts, but to aduance himselfe in Seruices, that tend to the glory of God, and to the good of the King and Common-wealth.

But it is Obiected, that if the Debtor hath estate and meanes to maintaine him in Prison, why doth hee not pay the Debt and cleere himselfe out of Prison?

Answer. For diuers iust and weighty causes: *viz.*

1. It is in generall reason presumed, that no man can be so voyde of vnderstanding or desperate of his owne life and liberty that will lye in Prison all his dayes, if (by any though hard conditions for flesh and blood to vndergoe) he may bee deliuered, for either to auoyde the shame, misery and danger of his life by Imprisonment, hee will pay the Debt if he can, or the Creditor (whose heart and eye is more directed to the state then the Body) will not make himselfe incapable to ceaze the estate by taking the Body. Hence therefore, it is in necessity of reason induced, that the Prisoner hath not meanes to pay the Debt,

2. The Debtor when he is cast into Prison hath seriously to consider, whether the payment of all his estate will cleere him or not.

For to pay all his estate for part of his Debt, and perish in Prison for the remainder,

Or to pay all his estate for the principall Debt and knowledge a new Iudgement for the Interest and Forfeitures, wherby he must shortly come to Prison again.

Or to pay all his estate to the Creditor that hath cast him in Prison, and not to haue wherewith to pay others who are ready to doe the like.

Or to pay all his estate for a Debt doubled by Forfeiture,

feiture, when he hath paid the greatestt partt already, is no other then to starue himselfe in prison, and consequently to betray his owne life, which the law of God and nature abhorreth.

Of all these reasons, the Creditor that cast him in prison (who commonly hath the worst and most extortious Debt) will take no notice, but against his owne conscience and knowledge, and to colour his cruelty, clamoureth and crieth out falsely, that the Debtor hath meanes to pay, but vnconscionably lyeth in prison, and will not pay.

3. The Imprisonment of the Debtors body, is the Creditors satisfaction that keepes him in prison. And it is the greatestt satisfaction that the Creditor can exact, and the dearestt payment that the Debtor can make. And the Creditor is thereby excluded from all pre-
tence against the prisoners estate, and can in no sort be truly said to keepe or spend the Creditors estate in prison, for if the prisoner shall pay all his meanes, and not be sure to quit his liberty thereby, hee payeth the Debt double, and doth iniustice against his owne life.

Now in all these cases (which are the most common causes and causes that prisoners pay not their Debts,)

It is a iust, equall, and reasonable thing in the Prisoner, not to pay the Creditor, but to keepe his estate, to defend his owne, his wife and childrens liues from perishing.

And therefore by all the reasons premized, it must needes be clearely against the Creditors owne profit, to imprison the body of the Debtor.



CAP. 7.

To the preiudice of the King and Common-wealth.

TO be found a Debtor in the Law, is no crime or violence done against the publique iustice or gouernment, but is breach of pact & contract betweene priuate men, whose particular interest it onely concerneth, and therefore the wisdom of the ancient Lawes of this Kingdome, gaue remedy and satisfaction out of the particular estate of the Debtor properly, but medled not with the body of the Debtor.

For the body of euery subiect belongeth to the King, and euery subiect is a member or single part of the body of the Common-wealth. Now to take the body of the Kings subiect, and a member of the Common-wealth, and to cast him into prison for Debt, where he must lye rusting and rotting idely and vnprofitably all the dayes of his life, and dye miserably, is no other then to strip and rob the King and Common-wealth of their limbes, and members, and consequently of the seruices and endeouours of a great number of good Subiects yeerely.

And that it may be seene how farre this losse or mischief done to the King and Common-wealth doth extend;

tend; Let it be first remembred, that there are shut vp in prisons for Debts men of euery quality, profession, and degree. Of which, many haue done, and the most part are able to doe, good seruice to the King and State in one kinde or other.

Secondly, let the numbers be considered, for in London alone (by miserable example) is found, three or foure thousand prisoners, the greatest part for Debt, amongst which are diuers Commanders, and men of quality, and good endowments, who haue done, and are able to doe, good seruice to his Maiestie and State. They are the same men, and haue the same vertues, yet both men and vertues are buried aliue in a Prison, with the spoyle and ouerthrow of them, their wyues and children.

And it is the more preiudiciall to the King & Common-wealth, by how much it is more compassionate, in regard an honest man may fall in the Law by a multitude of accidents, errors, practises, periuries, forgeries, and such like of others, and for doing honest, friendly, and Christian Offices, out of loue, friendship, and good intention to others, as is before shewne, when nothing can be said for the Creditor, but that he contracted for Vsurie, couetous gaine, or forfeiture things vnlawfull and hatefull in the sight of God and man.

And this Imprisonment of mens bodies for Debt, encourageth the Vsurer to giue so much blinde and desperate credit to young Gentlemen, who thereby are fed with mony to serue them in their wilde courses, and before they haue age or discretion to see their folly, or time to retract them, are eaten out by Vsury and Forfeitures, and oftentimes the father seeth his eldest sonne runne into deepe engagements, yet cannot restraine it,

whereby many an ancient house and family is overthrowne, and the Vsurer planted in his steed.

So is it with the painfull and honest Trader, who when the profit of his Trade exceeds not the Interest, he payes, yet is drawne along in hope of a better time or better fortune, till the Vsurer hath eaten him, and all his honest care and trauaile quite out.

And it is the maine cause also of infinite and vnecessary trust, otherwise giuen to men of all sorts and degrees through the Kingdome, who finding moneyes to be easily had of the Vsurer, by reason of this power ouer mens bodies, and not knowing, or not fearing the close byting and cankerous nature of Vsury; and being either out of their owne good nature a little free and profuse, or out of some accidentall cause of suites in Law (or such like) necessitated a little to exceede the compasse of their meanes, are in a very short time by Interests and Forfaitures consumed to nothing, or their estates so farre boared through and embroyled, that scarce one of a hundred can recouer it all their life after.

Moreouer, this Imprisonment for Debts is the cause of much murder and bloud-shed. For besides the incredible number of Prisoners yeerely choakt vp, and slaine by idle life, ill ayre, famine, plague, &c. (as before) and many times by desperate executions vpon their owne bodies, for the heavy waight of the miseries they beare, There are many slaughters and murders often committed betweene the Debtors seruants and friends, and the Bayliffes, Serieants, and Vnder-Sheriffes, who to gaine reward, will venter life and limbe to kill or be killed, for the arresting and haling the debtor to prison.

And it may not be conceiued, the lest preiudice to a
Christian

Christian Common-wealth, in that this Imprisoning mens bodies for Debts, is the onely Nurse and support of Vsury and Extortion, which God cannot abide; and it is the only spoile of charity amongst men, which God most loueth: who can tell how farre the wrath of God is kindled against this Common-wealth, or how much preiudice it hath, and may receiue for knowing and doing these things, and not reforming them?

If Vsury had not these Imprisoning priuiledges, to preuaile vpon the bodies of men; Then it would follow, that the Debtor, though hee had payd the Vsurer all his estate, yet hauing his person, qualities, and endeouours free, his friends constant, and his Credit vnstayed with the prison, is still able, ready, and fit to doe honour and seruice to his King and Countrey, and to winne and purchase himselfe a new estate, to the payment of his Debts, and aduancement of his owne fortunes. But if he be once foyled with the prison, hee is disabled to pay any Debt, to raise his fortunes, or to do his Maiestie or Countrey seruice.

And againe, if the recouery of Debts were to bee made onely against the Debtors estate, Then it would also follow, that this idle Trade of base Extortion and Vsury, would not bee altogether so frequent, nor so preiudiciall; for the greatest part of these Vsurious moneyes would bee imployed in Lands and lawfull Trade, whereby the poore in Towne and Countrey, would bee more and better set on worke: And honest Trade (that most aduanceth the honour, strength, and wealth of a Kingdome) would bee amplified: Charitie (the Mother and roote of all other vertues) would abound, and shine out euery where in her ancient splendour, and pull downe the blessings

of God more plentifully vpon this Kingdome and people. Truth, honesty, and a good name, would be the highest ambition; charitable and friendly borrowing and lending would be frequent; and honest, dealing men best imployed and esteemed.

And if Vsurious gaine were not, there could not be such need of money, nor could money be so scarce, for then men would be carefull to reserue money by them, to serue their owne and their friends need, and free borrowing and lending would cause and encrease charity and Christian amity amongst men, and knit them together in stronger bonds of loue, society, and friendship, whereas this lending for gaine, shuts vp the hand of all loue, friendship, and charity amongst men.

How necessary therefore it is that this euill practise be retracted, as well for the poore afflicted prisoners sake, for piety and Iustice sake, for the King and Common-wealthes sake, and to wash the hands of our Statute Lawes, from the guilt of so long and so great oppression and vnchristian cruelty vpon the bodies and lyues of poore men. Let it be considered; and that also this iust reformation will restore the life and honour of the ancient common Lawes of this Kingdome, repayre the Kings and Common-wealthes losse, and the Subjects freedome, answering to the Lawes of God, of Man, of Iustice and Conscience.

By the premisses it appeareth, that Imprisonment of mens bodies for Debt is very much, and many wayes preiudiciall to the King and Common-wealth, which if the Recouery were made onely against the Debtors estate, the preiudice were preuented, the Creditor better satisfied, and the poore Debtor deliuered from a world of miseries.



The Conclusion.

IT is therefore in Christian charity wished, and in all godly pollicy desired. That if it shal not seeme fit to grant a Iubilee, wherein mens bodies may be set free from Imprisonment and bondage, according to the will of God in the old Law; Or that all Debts and Trespases may be remitted according to the will of our Lord and Sauour in the new Law;

That yet the bodies and endeouours of all Debtors may be free from Imprisonment, and the Creditors recouery be made against the Debtors lands and goods, according to the ancient fundamentall Lawes of this Kingdome, which are not repealed: therefore ought to binde, and in this behalfe are most consonant to the law of God, to Christian charity, to the rule of Iustice, and to godly pollicy, as is before shewne.

And it were also to be wished, that the Offices, Fees, Annuities, Chattels and Lands, as well entailed as not entailed, of all Debtors of what degree soeuer (the wifes portion and dower for the reliefe of her selfe and children, according to the practise of all other Countries being first deducted) might be lyable to all iust and conscionable Debts.

Howbeit, if the Creditor shall be able to proue the Debtor guilty of any fraudulent Act, to deceiue him or other, of their Debts, then the Debtor to be imprisoned, and otherwise grieuously punished as a criminall offender,

offender, and his body and goods lyable to the Creditors Debt, in the vtmost extremity that either the present Lawes doe afford: or (if they bee not quicke and sharpe enough, to discouer and punish frauds and frauders in this kinde) by the extremity of such Lawes as shall be hereupon newly deuised and enacted, wherein there is no fauour desired.

So shall Gods Law be established, Iustice aduanced, Christian charity more practized, the ancient honour of our Lawes and polittique gouernment restored, and this iniust, inconstionable, and Heathenesh cruelty and oppression of one Christian Brother vpon the other, by spoyling, consuming, and staruing, &c. Together with all the inexplicable miseries that attend imprisonment of Mens bodies for Debt, bee clearely dismissed and auoyded.

And finally, these poore Petitioners most humbly beseecheth your most excellent Maiestie, that vntill these Statute Lawes may be repealed and made voyde, or some other course taken in Parliament: That the Commission (for the reliefe of indebted Prisoners) granted by the late *Queene Elizabeth*, for her and her Successours, in the 28. yeere of her Raigne aforesaid, being still in force, and recorded in your Highnesse Court of Chauncerie, may be exemplified: and so put in execution according to the power and effect therof. And your poore Subiects shall daily pray, &c.

FINIS.

1157 108c
DOD STREET-COMPTER.

PLEA, for its Prisoner.

OR

seventeen reasons, which induce mee Nathaniel Wickins, servant to Mr. William Prynn; but now Prisoner in the sayd Compter. To refuse to take the Oath *Ex Officio*; wherein it is plainly pro-

ved, that it is unlawfull when it is gi-

ven only to the searching out ei-

ther of a Crime against our

selves, or pretended against

our brethren, with

the Objections to the

sayd reasons fully

answered.

Jeremiah: 23. ver: 10.

because of swearing the Land mourneth: the pleasant

places of the wilderness are dried up, and their course

is evill, and their forte is not right.

By NATHANIEL WICKINS.



Printed in the second yeare of remembrance

1638.